

K.H., Appellant

**U.S. POSTAL SERVICE, POST OFFICE,
Hartford, CT, Employer**

Appearances:

Bruce Didriksen, for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

Before:

JURISDICTION

On August 24, 2021 appellant, through his representative, filed a timely appeal from an August 3, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on a appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the August 3, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted February 4, 2020 employment incident.

FACTUAL HISTORY

On February 21, 2020 appellant, then a 41-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 4, 2020 he sustained lower back pain while in the performance of duty. He recounted that he “heard a click” while putting a heavy package in his truck, hurt a nerve in his lower back, and felt “too much pain.” Appellant noted that his doctor thought he popped a disc and was awaiting diagnostic results. On the reverse side of the claim form his employing establishment supervisor, W.B., acknowledged that he was injured in the performance of duty. Appellant stopped work on February 5, 2020.

In a February 7, 2020 progress note, Dr. Joseph Hung, Board-certified in pain medicine, related that appellant tried to push a heavy package into his truck at work approximately three days earlier and felt a sharp pull on the right side of his lower back, which quickly progressed to severe, sharp, and spasmodic pain. Appellant’s symptoms also began radiating on the posterior lateral aspect of the right lower extremity to the foot and he was walking with a considerable limp. Dr. Hung noted that appellant’s pain was persistent and was worse with bending, lifting, and walking. An examination revealed antalgic gait, flexion, extension, rotation, and lateral bending with discomfort on the right, moderate tenderness over the paravertebral lumbar region on the right, and facet loading with discomfort on the right. Flexion and extension radiographs of the lumbar spine taken on February 7, 2020 revealed loss of disc height preferentially affecting the L4-5 and L5-S1 levels and facet arthrosis. Dr. Hung diagnosed lumbar radiculopathy, spondylosis, acute right-sided low back pain, and disc disorder and recommended a magnetic resonance imaging (MRI) scan of the lumbar spine. In a work restriction note of even date, he noted that appellant was under his care for acute or chronic right-sided lumbosacral pain thought secondary to an intervertebral disc herniation and resulting lumbar radiculitis. Dr. Hung advised that appellant not engage in repeated bending, twisting, or lifting anything greater than 10 pounds for at least four weeks.

In a February 21, 2020 report, Diane Gendron, a nurse, noted that the patient was out of work on February 5, 2020 with a lower back injury.

Appellant also submitted a February 24, 2020 duty status report (Form CA-17) from Dr. Hung who related that appellant experienced right leg weakness and diagnosed lumbar radiculopathy. Dr. Hung advised that appellant should not lift more than 10 pounds or repeatedly bend or twist for six weeks and indicated that appellant should remain out of work. In an attending physician’s report (Form CA-20) of even date, he related appellant’s history of acute back and leg pain while lifting on the job in early February 2020. Dr. Hung diagnosed degenerative disc disease in L4-5 and L5-S1 and lumbar radiculopathy. He noted that appellant had no history of a concurrent or preexisting condition. Dr. Hung responded affirmatively that the condition was caused or aggravated by an employment activity, but did not provide any further explanation.

In a development letter dated February 28, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant at least 30 days to respond.

In a March 6, 2020 response to OWCP's development letter, appellant reported that on February 4, 2020 he was trying to put a heavy package in his truck when he felt a sharp pull in the right side of his lower back, followed immediately by severe back pain. The pain was severe enough that he could barely walk. The pain worsened overnight and the next day he did not work and could not really move out of bed. On February 6, 2020 appellant called in sick and sought medical treatment. He stated that he did not have similar injuries prior to or since the February 4, 2020 injury. Appellant noted his ongoing pain.

By decision dated March 31, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted February 4, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury causally related to the accepted employment incident.

In an April 10, 2020 letter, Dr. Hung related appellant's symptoms following the February 4, 2020 employment incident and noted that appellant's symptoms were most compatible with lumbosacral radiculopathy secondary to an intervertebral disc herniation. He opined that "[g]iven the onset of his symptoms shortly after lifting a heavy object and the fact that intervertebral disc pressures are known to increase with lifting, it is my medical opinion that his pain condition is likely related to this action (lifting) while at work."

On April 29, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In April 29 and July 1, 2020 progress notes, Dr. Hung again related appellant's history of symptoms, including discomfort with standing, pain, and numbness, and his treatment for lumbosacral and lower extremity pain thought secondary to acute intervertebral disc herniation and resulting lumbar radiculopathy. He continued to advise appellant to pursue the previously-ordered MRI scan of the lumbar spine given his complaints of neurologic dysfunction. In a July 1, 2020 work restriction note, Dr. Hung diagnosed acute or chronic lumbosacral and lower extremity pain thought secondary to an intervertebral disc herniation and resulting lumbar radiculitis. He advised that appellant should not engage in prolonged standing, lifting, bending, or twisting for at least another four weeks, as those activities are known to increase lumbar intervertebral disc pressures.

By decision dated August 6, 2020, OWCP's hearing representative affirmed the March 31, 2020 decision.

OWCP subsequently received a July 31, 2020 progress note from Dr. Hung, noting that appellant's symptoms had significantly worsened in the preceding weeks without any specific trauma or trigger.

In a May 1, 2021 letter, Dr. Hung diagnosed lumbosacral and lower extremity pain resulting from a radiographically-confirmed L4-5 intervertebral disc herniation with resulting lumbar spinal stenosis and bilateral L5 lumbar radiculitis. He related that appellant had been lifting and pushing a heavy package into his delivery truck when he felt a sharp pull affecting the right side of his low back. Dr. Hung described the progression of appellant's symptoms, including severe and spasmodic discomfort radiating down the posterolateral aspect of the right lower extremity to the foot, ongoing significant discomfort when standing in place for more than a few

minutes at a time, and worsening pain with bending, twisting, and lifting. He indicated that appellant's symptoms were consistent with an August 20, 2020 MRI scan of the lumbar spine showing lumbar spinal stenosis at L4-5 and compression of the bilateral L5 traversing nerve roots from a herniated L4-5 intervertebral disc.

Dr. Hung opined that "within a reasonable degree of certainty, the diagnosed conditions referenced above were directly caused by lifting heavy packages while on the job early February 2020." He noted that "[l]ifting while in a forward flexed position is well known to cause increased pressure on the intervertebral discs and is often the medical textbook example of an activity, which results in a symptomatic intervertebral disc herniation." Dr. Hung based his opinion upon his personal examination of the patient and his extensive experience in treating other patients with similar presenting painful symptoms and injuries.

On May 5, 2021 appellant, through his representative, requested reconsideration.

In a May 13, 2021 progress report, Dr. Hung noted that appellant underwent bilateral L4-5 transforaminal epidural corticosteroid injections on April 26, 2021 to treat the lumbosacral and lower extremity pain thought secondary to an L4-5 intervertebral disc herniation and resulting lumbar radiculopathy. Appellant reported approximately 40 percent improvement of his pain following the injections. Dr. Hung indicated that appellant continued to have right-sided hip and lower extremity tightness, but that appellant attributed this somewhat to being debilitated and deconditioned over the preceding year. He noted that appellant had previously been referred for physical therapy, but that it made his pain symptoms worse.⁴

By decision dated August 3, 2021, OWCP denied modification of its August 6, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁶ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the

⁴ Dr. Hung's report also contained the results of an August 20, 2020 MRI scan of the lumbar spine, which revealed, among other findings, L4-5 moderate degenerative disc disease, abnormal signal intensity of the disc with T2 hyperintensity and loss of disc space height, mild edema pattern of the endplates on a degenerative basis, broad-based herniation, ligamentum flavum thickening, and a component of developmental stenosis yielding moderate compression of the thecal sac and an impingement of both L5 traversing nerve roots, moderate facet arthropathy, a small amount of fluid-containing synovitis of each facet joint, and mild-to-moderate neural foraminal stenosis, as well as L5-S1 degenerative disc disease with loss of T2-weighted disc signal and disc height, disc bulge with a central to right paracentral annular fissure, minimal thecal sac indentation, and mild right and mild-to-moderate left facet arthropathy.

⁵ *Supra* note 2.

⁶ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.⁷ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁹

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.¹¹

ANALYSIS

The Board finds that this case is not in posture for decision.

In a May 1, 2021 letter, Dr. Hung explained that on February 4, 2020 appellant was lifting and pushing a heavy package into his delivery truck when he felt a sharp pull affecting the right side of his low back, followed by severe and spasmodic discomfort radiating down the posterolateral aspect of the right lower extremity to the foot, ongoing significant discomfort when standing in place for more than a few minutes at a time, and worsening pain with bending, twisting, and lifting. He further explained, in pathophysiological terms, how the incident of February 4, 2020 caused appellant's diagnosed L4-5 intervertebral disc herniation, lumbar spinal stenosis, and bilateral L5 lumbar radiculitis. Specifically, Dr. Hung explained that "[l]ifting while in a forward flexed position is well known to cause increased pressure on the intervertebral discs and is often the medical textbook example of an activity which results in a symptomatic intervertebral disc herniation." He opined that, to a reasonable degree of medical certainty, based on his personal examination of appellant, diagnostic imaging studies, and his extensive experience treating similar

⁷ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *T.H.*, Docket No. 19-0599 (issued January 28, 2020) *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

conditions in other patients, appellant's lumbar injuries were directly caused by lifting heavy packages in early February 2020 while in the performance of duty.

The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹²

Dr. Hung provided a pathophysiological explanation as to how the incident of February 4, 2020 caused appellant's lumbar conditions. Although his May 1, 2021 letter is insufficient to meet appellant's burden of proof to establish his claim, it raises an uncontroverted inference between his diagnosed lumbar conditions and the accepted factors of his federal employment. Accordingly, Dr. Hung's medical opinion is sufficiently rationalized to require further development of appellant's claim.¹³

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁴ OWCP has an obligation to see that justice is done.¹⁵

On remand OWCP shall refer appellant to a medical specialist in the appropriate field of medicine, along with a case record and a statement of accepted facts, for a physical evaluation and provide a rationalized medical opinion as to whether appellant's diagnosed conditions were caused or aggravated by the accepted February 4, 2020 employment incident. If the physician opines that appellant's lumbar conditions are not causally related to the accepted employment incident, he or she must explain with rationale how or why their opinion differs from that of Dr. Hung. After this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹² *B.C.*, Docket No. 20-0498 (issued August 27, 2020); *L.P.*, Docket No. 18-1252 (issued June 4, 2020); *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011) *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

¹³ *J.P.*, Docket No. 19-1206 (issued February 11, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *C.W.*, Docket No. 17-1293 (issued February 12, 2018); *see also John J. Carlone, supra* note 9; *Horace Langhome*, 29 ECAB 820 (1978).

¹⁴ *See M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

¹⁵ *See C.M.*, Docket No. 17-1977 (issued January 29, 2019); *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 9, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board